

FW: Urgent Follow-up to Call // Enforcement Considerations

From: "StMarseille, Richard" </o=collaboration/ou=exchange administrative group (fydibohf23spdlit)/cn=recipients/cn=richard.stmarseille">
To: "Robertson, Jeff" <jeff.robertson@cbsa-asfc.gc.ca>
Cc: "Chaudhari, Saher" <saher.chaudhari@cbsa-asfc.gc.ca>, "Tower, Andrew" <andrew.tower@cbsa-asfc.gc.ca>
Date: Thu, 10 Feb 2022 17:51:43 +0000
Attachments: FW: CBSA Intelligence Placemats - 2021 Human Smuggling Matrix and Types of Facilitation and Disruption / Fiches de renseignement de l'ASFC - 2021 Matrice du passage de clandestins et les méthodes de facilitation et catégories d'activités de perturbation (132.61 kB)

Thanks Jeff

Why doesn't the response refer to the indictable criminal offices highlighted in green below that have been flagged by I&E as potentially applicable ?

From: Robertson, Jeff <Jeff.Robertson@cbsa-asfc.gc.ca>
Sent: February 10, 2022 12:45 PM
To: StMarseille, Richard <Richard.StMarseille@cbsa-asfc.gc.ca>
Cc: Chaudhari, Saher <Saher.Chaudhari@cbsa-asfc.gc.ca>; Tower, Andrew <Andrew.Tower@cbsa-asfc.gc.ca>
Subject: FW: Urgent Follow-up to Call // Enforcement Considerations

Hello Richard,

With respect to the request for bullets on the use of section 37, Jennifer Nicholson has approved the following:

Section 37 of the *Immigration and Refugee Protection Act* authorizes immigration enforcement to be undertaken on the basis of a permanent resident or foreign national on the basis of organized criminality. While section 37 provides an option with which to respond to the behaviour of foreign nationals or permanent residents of Canada involved in the occupation, it is not clear that the organization's current activity would meet the thresholds for criminality required under the provision. A clear link to the organization furthering the commission of an indictable offence would be required before section 37 could be contemplated.

The viability of section 37 increases as the activities of the group become described by indictable criminal offences, and in such an eventuality, would require the Minister to demonstrate that a foreign national or permanent resident was either:

- a) a member of an organization believed on reasonable grounds to be engaged in activity that is part of a pattern of criminal activity planned and organized by number of persons acting in concert in furtherance of the commission of *an offence punishable under an Act of Parliament by way of indictment*; or

b) engaging in activity that is part of such a pattern.

While foreign nationals or permanent residents could be described under section 37 without any personalized evidence of those persons committing indictable offences, and indeed even by engaging in otherwise lawful behaviour; a link between the activities of the organization to an indictable offence is required, along with a link between the foreign national or permanent resident subject to immigration enforcement either to membership in the group, or to engaging in part of the pattern of activity.

The jurisprudence supports a broad and unrestricted interpretation of membership, which provides the Minister with some latitude in terms of the nature of the evidence that could be introduced in order to satisfy the Immigration and Refugee Board that a person was either a member of an organization, or part of the pattern of activity. The evidence linking the person to the group would need to be precise and personalized (ie the Minister would need to submit evidence relating to the person's activity, or details relevant to the individual rather than allegations attributed to the person based on activities of other members of the group).

There is a risk that litigation of the CBSA pursuing immigration enforcement on the basis of section 37 could invite the Federal Court to consider the need for the Minister to establish that persons inadmissible due to organized criminality, or the organizations to which they are associates, be deriving a material benefit from the criminal activity. Such an outcome in litigation would increase the evidentiary burden on the Minister in subsequent use of the provision, and would likely present an evidentiary challenge in use of the provision in the current scenario.

Thanks,

jeff

From: StMarseille, Richard <Richard.StMarseille@cbsa-asfc.gc.ca>
Sent: February 10, 2022 9:42 AM
To: Lorenz, Christian <Christian.Lorenz@cbsa-asfc.gc.ca>; Nicholson, Jennifer <Jennifer.Nicholson@cbsa-asfc.gc.ca>; Traves, Tara <Tara.Traves@cbsa-asfc.gc.ca>
Cc: O'Neill, Erin <Erin.O'Neill@cbsa-asfc.gc.ca>; O'Neill, Erin <Erin.O'Neill@cbsa-asfc.gc.ca>; Robertson, Jeff <Jeff.Robertson@cbsa-asfc.gc.ca>; Tower, Andrew <Andrew.Tower@cbsa-asfc.gc.ca>; Chaudhari, Saher <Saher.Chaudhari@cbsa-asfc.gc.ca>
Subject: RE: Urgent Follow-up to Call // Enforcement Considerations
Importance: High

Will do. Jeff can you please get in touch with Jennifer/Tara and put some bullets together asap this morning for Chris and I to review.

From: Lorenz, Christian <Christian.Lorenz@cbsa-asfc.gc.ca>
Sent: February 10, 2022 9:41 AM
To: StMarseille, Richard <Richard.StMarseille@cbsa-asfc.gc.ca>; Nicholson, Jennifer <Jennifer.Nicholson@cbsa-asfc.gc.ca>; Traves, Tara <Tara.Traves@cbsa-asfc.gc.ca>
Cc: O'Neill, Erin <Erin.O'Neill@cbsa-asfc.gc.ca>; O'Neill, Erin <Erin.O'Neill@cbsa-asfc.gc.ca>
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OK – can we generate some return wording to highlight that option quickly?

Chris Lorenz

Director General, Enforcement
Intelligence and Enforcement Branch
Canada Border Services Agency / Government of Canada
christian.lorenz@cbsa-asfc.gc.ca / Telephone: 902-499-0836 (*Temporary)

Directeur Général, Exécution de la loi
Direction d'exécution de la loi et du renseignement
Agence des services frontaliers du Canada / Gouvernement du Canada
christian.lorenz@cbsa-asfc.gc.ca / Téléphone: 902-499-0836 (*Temporaire*)

All recipients may respond in their official language of choice / Tous les destinataires peuvent répondre dans la langue officielle de leur choix

From: StMarseille, Richard <Richard.StMarseille@cbsa-asfc.gc.ca>
Sent: February 10, 2022 10:38 AM
To: Nicholson, Jennifer <Jennifer.Nicholson@cbsa-asfc.gc.ca>; Lorenz, Christian <Christian.Lorenz@cbsa-asfc.gc.ca>; Traves, Tara <Tara.Traves@cbsa-asfc.gc.ca>
Cc: O'Neill, Erin <Erin.O'Neill@cbsa-asfc.gc.ca>
Subject: RE: Urgent Follow-up to Call // Enforcement Considerations

Agree

That's likely the best one, and doesn't need a conviction

From: Nicholson, Jennifer <Jennifer.Nicholson@cbsa-asfc.gc.ca>
Sent: February 10, 2022 9:35 AM
To: Lorenz, Christian <Christian.Lorenz@cbsa-asfc.gc.ca>; StMarseille, Richard <Richard.StMarseille@cbsa-asfc.gc.ca>; Traves, Tara <Tara.Traves@cbsa-asfc.gc.ca>
Cc: O'Neill, Erin <Erin.O'Neill@cbsa-asfc.gc.ca>
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What about organized criminality? Any reason that is not included?

From: Lorenz, Christian <Christian.Lorenz@cbsa-asfc.gc.ca>
Sent: February 10, 2022 9:33 AM
To: StMarseille, Richard <Richard.StMarseille@cbsa-asfc.gc.ca>; Nicholson, Jennifer <Jennifer.Nicholson@cbsa-asfc.gc.ca>; Traves, Tara <Tara.Traves@cbsa-asfc.gc.ca>
Cc: O'Neill, Erin <Erin.O'Neill@cbsa-asfc.gc.ca>
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Director General, Enforcement
Intelligence and Enforcement Branch
Canada Border Services Agency / Government of Canada
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Directeur Général, Exécution de la loi

Direction d'exécution de la loi et du renseignement
Agence des services frontaliers du Canada / Gouvernement du Canada
christian.lorenz@cbsa-asfc.gc.ca / Téléphone: 902-499-0836 (*Temporaire*)

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From: Badour, Dan <Dan.Badour@cbsa-asfc.gc.ca>
Sent: February 10, 2022 8:57 AM
To: Ommanney, John <John.Ommanney@cbsa-asfc.gc.ca>; Vinette, Denis R. <Denis.Vinette@cbsa-asfc.gc.ca>; Harris, Scott <Scott.Harris@cbsa-asfc.gc.ca>; Gaspar, Fred <Fred.Gaspar@cbsa-asfc.gc.ca>
Cc: Lorenz, Christian <Christian.Lorenz@cbsa-asfc.gc.ca>; Blanchard, NathalieX <NathalieX.Blanchard@cbsa-asfc.gc.ca>; Clairoux, Lara <Lara.Clairoux@cbsa-asfc.gc.ca>; Boismier, Emilie <Emilie.Boismier@cbsa-asfc.gc.ca>; Boismier, Emilie <Emilie.Boismier@cbsa-asfc.gc.ca>; Boismier, Emilie <Emilie.Boismier@cbsa-asfc.gc.ca>
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Updated again - removed the elements on subversion from the document.

Dan Badour

Acting Director General / Afghanistan Task Force
Operational Guidance and Support Directorate / Travellers Branch
Canada Border Services Agency / Government of Canada
Dan.Badour@cbsa-asfc.gc.ca / Cel: 519-791-0526 / TTY: 866-335-3237

Directeur général par intérim / Groupe de travail Afghanistan
Direction de l'orientation et soutien opérationnels / Direction générale des voyageurs
Agence des services frontaliers du Canada / Gouvernement du Canada
Dan.Badour@cbsa-asfc.gc.ca / Tél. cell.: 519-791-0526 / ATS: 866-335-3237

From: Badour, Dan
Sent: February 10, 2022 7:39 AM
To: Ommanney, John <John.Ommanney@cbsa-asfc.gc.ca>; Vinette, Denis R. <Denis.Vinette@cbsa-asfc.gc.ca>; Harris, Scott <Scott.Harris@cbsa-asfc.gc.ca>; Gaspar, Fred <Fred.Gaspar@cbsa-asfc.gc.ca>
Cc: Lorenz, Christian <Christian.Lorenz@cbsa-asfc.gc.ca>; Blanchard, NathalieX <NathalieX.Blanchard@cbsa-asfc.gc.ca>; Clairoux, Lara <Lara.Clairoux@cbsa-asfc.gc.ca>; Boismier, Emilie <Emilie.Boismier@cbsa-asfc.gc.ca>; Boismier, Emilie <Emilie.Boismier@cbsa-asfc.gc.ca>
Subject: RE: Urgent Follow-up to Call // Enforcement Considerations

Updated removing note item as per below.

Dan Badour

Acting Director General / Afghanistan Task Force
Operational Guidance and Support Directorate / Travellers Branch
Canada Border Services Agency / Government of Canada
Dan.Badour@cbsa-asfc.gc.ca / Cel: 519-791-0526 / TTY: 866-335-3237

Directeur général par intérim / Groupe de travail Afghanistan
Direction de l'orientation et soutien opérationnels / Direction générale des voyageurs
Agence des services frontaliers du Canada / Gouvernement du Canada
Dan.Badour@cbsa-asfc.gc.ca / Tél. cell.: 519-791-0526 / ATS: 866-335-3237

From: Ommanney, John <John.Ommanney@cbsa-asfc.gc.ca>
Sent: February 10, 2022 7:37 AM
To: Badour, Dan <Dan.Badour@cbsa-asfc.gc.ca>; Vinette, Denis R. <Denis.Vinette@cbsa-asfc.gc.ca>; Harris, Scott <Scott.Harris@cbsa-asfc.gc.ca>; Gaspar, Fred <Fred.Gaspar@cbsa-asfc.gc.ca>
Cc: Lorenz, Christian <Christian.Lorenz@cbsa-asfc.gc.ca>; Blanchard, NathalieX <NathalieX.Blanchard@cbsa-asfc.gc.ca>; Clairoux, Lara <Lara.Clairoux@cbsa-asfc.gc.ca>; Boismier, Emilie <Emilie.Boismier@cbsa-asfc.gc.ca>
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One additional note, our current system doesn't have a "suspend" option, hence our previous practice of suspending/reinstating. That is another avenue we could explore. Solicitor-Client Priv. [REDACTED]
Solicitor-Client [REDACTED]

I would just include the numbered points in the note (i.e. remove the text after "Note:" in that section).

From: Ommanney, John
Sent: February 10, 2022 7:33 AM
To: Badour, Dan <Dan.Badour@cbsa-asfc.gc.ca>; Vinette, Denis R. <Denis.Vinette@cbsa-asfc.gc.ca>; Harris, Scott <Scott.Harris@cbsa-asfc.gc.ca>; Gaspar, Fred <Fred.Gaspar@cbsa-asfc.gc.ca>
Cc: Lorenz, Christian <Christian.Lorenz@cbsa-asfc.gc.ca>; Blanchard, NathalieX <NathalieX.Blanchard@cbsa-asfc.gc.ca>; Clairoux, Lara <Lara.Clairoux@cbsa-asfc.gc.ca>; Boismier, Emilie <Emilie.Boismier@cbsa-asfc.gc.ca>
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Dan,

Points below on FAST. As you can see, Solicitor-Client Priv. [REDACTED] I'll follow up once we have more. Let me know if you have any questions.

John.

1. FAST applications are only cancelled when a driver has been convicted of an offence under the Criminal Code or other relevant legislation (IRPA, Customs Act, etc.). Pending charges do not result in membership cancellation.

Note: It was previous practice to cancel FAST memberships due to charges, and then re-instate the membership if the driver wasn't convicted. Solicitor-Client Priv. [REDACTED]
Solicitor-Client Priv. [REDACTED]

2. If a FAST driver is convicted of an offence under the Criminal Code, the FAST membership would be cancelled.

3. s.37 [REDACTED]

s.37 [REDACTED]

s.37 [REDACTED]

[REDACTED] In addition, we are not aware of the extent to which police forces of jurisdiction could share information about charges/convictions

with CBSA, i.e. what existing MOUs could allow for this information sharing. Solicitor-Client Priv.

Solicitor-Client Priv.

For example, we might want police to inform CBSA of all charges laid in this protest, and we could then determine which individuals are FAST members. However, that would mean the CBSA receiving a lot of information we don't need (all the non-FAST members) and we'd need to make sure there is a MOU in place to support that info-sharing in the first place.

From: Badour, Dan <Dan.Badour@cbsa-asfc.gc.ca>

Sent: February 10, 2022 7:11 AM

To: Vinette, Denis R. <Denis.Vinette@cbsa-asfc.gc.ca>; Harris, Scott <Scott.Harris@cbsa-asfc.gc.ca>; Gaspar, Fred <Fred.Gaspar@cbsa-asfc.gc.ca>

Cc: Lorenz, Christian <Christian.Lorenz@cbsa-asfc.gc.ca>; Ommanney, John <John.Ommanney@cbsa-asfc.gc.ca>; Blanchard, NathalieX <NathalieX.Blanchard@cbsa-asfc.gc.ca>; Clairoux, Lara <Lara.Clairoux@cbsa-asfc.gc.ca>; Boismier, Emilie <Emilie.Boismier@cbsa-asfc.gc.ca>

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Denis asked meto incorporate the Chris Lorenz's info from last night into the attached document for 7:30 this AM.

Fred – I removed the International Trade Corridor concept from the document.

John O – was there anything you had further.

Dan Badour

Acting Director General / Afghanistan Task Force
Operational Guidance and Support Directorate / Travellers Branch
Canada Border Services Agency / Government of Canada
Dan.Badour@cbsa-asfc.gc.ca / Cel: 519-791-0526 / TTY: 866-335-3237

Directeur général par intérim / Groupe de travail Afghanistan
Direction de l'orientation et soutien opérationnels / Direction générale des voyageurs
Agence des services frontaliers du Canada / Gouvernement du Canada
Dan.Badour@cbsa-asfc.gc.ca / Tél. cell.: 519-791-0526 / ATS: 866-335-3237

From: Vinette, Denis R. <Denis.Vinette@cbsa-asfc.gc.ca>

Sent: February 9, 2022 10:50 PM

To: Badour, Dan <Dan.Badour@cbsa-asfc.gc.ca>

Subject: Fwd: Urgent Follow-up to Call

Denis R. Vinette

Begin forwarded message:

From: "Harris, Scott" <Scott.Harris@cbsa-asfc.gc.ca>

Date: February 9, 2022 at 10:42:47 PM EST

To: "Lorenz, Christian" <Christian.Lorenz@cbsa-asfc.gc.ca>

Cc: "Vinette, Denis R." <Denis.Vinette@cbsa-asfc.gc.ca>, "Millar, Scott" <Scott.Millar@cbsa-asfc.gc.ca>, "Gallivan, Ted" <Ted.Gallivan@cbsa-asfc.gc.ca>, "Ossowski, John"

<John.Ossowski@cbsa-asfc.gc.ca>, "Johnston, Jag" <Jag.Johnston@cbsa-asfc.gc.ca>, "Clairoux, Lara" <Lara.Claireux@cbsa-asfc.gc.ca>, "Blanchard, Nathalie" <NathalieX.Blanchard@cbsa-asfc.gc.ca>, "O'Neill, Erin" <Erin.O'Neill@cbsa-asfc.gc.ca>
Subject: Re: Urgent Follow-up to Call

Thanks Chris

Et al ... think I would remove the treason aspect for now. Any concerns with sharing with IRCC?

Sent from my iPhone

On Feb 9, 2022, at 10:39 PM, Lorenz, Christian <Christian.Lorenz@cbsa-asfc.gc.ca> wrote:

Hi Scott – responses and additional information embedded in the below. Hope this helps.

CL

Chris Lorenz

Director General, Enforcement
Intelligence and Enforcement Branch
Canada Border Services Agency / Government of Canada
christian.lorenz@cbsa-asfc.gc.ca / Telephone: 902-499-0836 (*Temporary)

Directeur Général, Exécution de la loi
Direction d'exécution de la loi et du renseignement
Agence des services frontaliers du Canada / Gouvernement du Canada
christian.lorenz@cbsa-asfc.gc.ca / Téléphone: 902-499-0836 (*Temporaire*)

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From: Harris, Scott <Scott.Harris@cbsa-asfc.gc.ca>
Sent: February 9, 2022 10:21 PM
To: Lorenz, Christian <Christian.Lorenz@cbsa-asfc.gc.ca>
Cc: Vinette, Denis R. <Denis.Vinette@cbsa-asfc.gc.ca>; Millar, Scott <Scott.Millar@cbsa-asfc.gc.ca>; Gallivan, Ted <Ted.Gallivan@cbsa-asfc.gc.ca>; Ossowski, John <John.Ossowski@cbsa-asfc.gc.ca>; Johnston, Jag <Jag.Johnston@cbsa-asfc.gc.ca>; Clairoux, Lara <Lara.Claireux@cbsa-asfc.gc.ca>
Subject: Urgent Follow-up to Call

Hi Chris: Further to our discussion, please find below some questions that I have been asked by IRCC, who was asked in turn by Rob Stewart following meetings on the protests today. The goal is to prepare a list of potential consequences to communicate as early as tomorrow to those involved in protests – some of which we have already seen from our colleagues at TC. Following some discussions s.38

s.38

s.38

The specific questions were as below:

- 1) Same general premise but if you are CHARGED (not convicted) for offences related to the blockades, the US is prepared to say no to crossing. Could we say the same for south to north movement of US charged?

If the charges or convictions are of US origin based on acts in the US, then we would need to determine if there is a comparable offence in Canadian law, and then we would need to make sure it is indictable and is sufficient to make them inadmissible to Canada.

For any of the protests going on in Canada, and in the context of IRPA, we would need convictions before we can start discussing anything about inadmissibility. Assuming that there are convictions, then we need to look at the sentence that they receive. Based on extracts from the Criminal Code for Mischief and Intimidation below, both offences can receive summary convictions and indictments. For the purposes of the IRPA, if any of the protesters were convicted by way of an indictment then it is likely that any foreign nationals, including US citizens, could be inadmissible to Canada and could be reported as being inadmissible to Canada. However, this are all predicated on what charges, if any, are laid against the protesters and what convictions they may receive.

For the criminal aspect, it would be difficult to say that Canada would absolutely bar such people from entering the country in the future using these provisions unless they already have convictions elsewhere that we are unaware of.

Of note, there are some other possibilities to consider as well. Negative discretion under s22.1 of the IRPA to bar persons from entering Canada that the Minister of IRCC deems it appropriate due to public policy considerations has been discussed previously. This may not have been an appropriate tool for a proactive response, but it could be used as a reactive response if the Minister of IRCC deems it contrary to the public interest to permit some of these people to return to Canada in the future. The extract is provided below, but it appears that this could be applied for a three year period, and IRCC would have to weigh on this.

Another avenue is to consider what this protest has turned into. The 'organizers' have not identified any interest in talking with the Prime Minister or the Government at all. Rather, they have presented their objective as the ouster of the Canadian Government. I suspect that people do not want to charge anyone with treason but if there is evidence that foreign nationals or organizations are funding an event which would be banned from an election, there is an argument to be made that this is foreign interference in a domestic political protest.

This event could also be seen as subversion by force, where there could be an argument made that the psychological impact of the horns and the physical intimidation that has been going in downtown is the force that is being applied to force the Government out. Technically, this would meet the elements of the argument for s34(1)(b), and if you wanted to consider membership in the convoy as such then you could also apply s34(1)(f). We could even consider an inadmissibility under s34(1)(e) for being a danger to the public, but I don't know if any of these would be successful in getting a finding of inadmissibility. The benefit of this is that none of these inadmissibilities require any conviction. However, there is also a risk that this could be seen as an abuse of process and, if we failed in proving the cases, the Government could face multiple law suits for using these inadmissibility. Again, we would have to build up all available evidence to be able to state categorically if we have the evidence to support this.

Immigration and Refugee Protection Act

Serious criminality

- **36 (1)** A permanent resident or a foreign national is inadmissible on grounds of serious criminality for
 - o (a) having been convicted in Canada of an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years, or of an offence under an Act of Parliament for which a term of imprisonment of more than six months has been imposed;
 - o (b) having been convicted of an offence outside Canada that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years; or
 - o (c) committing an act outside Canada that is an offence in the place where it was committed and that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years.

Criminality

- **36(2)** A foreign national is inadmissible on grounds of criminality for
 - o (a) having been convicted in Canada of an offence under an Act of Parliament punishable by way of indictment, or of two offences under any Act of Parliament not arising out of a single occurrence;
 - o (b) having been convicted outside Canada of an offence that, if committed in Canada, would constitute an indictable offence under an Act of Parliament, or of two offences not arising out of a single occurrence that, if committed in Canada, would constitute offences under an Act of Parliament;
 - o (c) committing an act outside Canada that is an offence in the place where it was committed and that, if committed in Canada, would constitute an indictable offence under an Act of Parliament; or
 - o (d) committing, on entering Canada, an offence under an Act of Parliament prescribed by regulations.

Declaration

- **22.1 (1)** The Minister may, on the Minister's own initiative, declare that a foreign national, other than a foreign national referred to in section 19, may not become a temporary resident if the Minister is of the opinion that it is justified by public policy considerations.

Effective period

- **(2)** A declaration has effect for the period specified by the Minister, which is not to exceed 36 months.

Revocation

- **(3)** The Minister may, at any time, revoke a declaration or shorten its effective period.

Criminal Code of Canada

Mischief

- **430 (1)** Every one commits mischief who wilfully
 - o (a) destroys or damages property;
 - o (b) renders property dangerous, useless, inoperative or ineffective;
 - o (c) obstructs, interrupts or interferes with the lawful use, enjoyment or operation of property; or
 - o (d) obstructs, interrupts or interferes with any person in the lawful use, enjoyment or operation of property.

Punishment

- **430(2)** Every one who commits mischief that causes actual danger to life is guilty of an indictable offence and liable to imprisonment for life

430(3) Every one who commits mischief in relation to property that is a testamentary instrument or the value of which exceeds five thousand dollars
o (a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years; or
o (b) is guilty of an offence punishable on summary conviction

430(4) Every one who commits mischief in relation to property, other than property described in subsection (3),
o (a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years; or
o (b) is guilty of an offence punishable on summary conviction

Intimidation

423 (1) Every one is guilty of an indictable offence and liable to imprisonment for a term of not more than five years or is guilty of an offence punishable on summary conviction who, wrongfully and without lawful authority, for the purpose of compelling another person to abstain from doing anything that he or she has a lawful right to do, or to do anything that he or she has a lawful right to abstain from doing,

- o (a) uses violence or threats of violence to that person or their intimate partner or children, or injures the person's property
- o (b) intimidates or attempts to intimidate that person or a relative of that person by threats that, in Canada or elsewhere, violence or other injury will be done to or punishment inflicted on him or her or a relative of his or hers, or that the property of any of them will be damaged
- o (c) persistently follows that person
- o (d) hides any tools, clothes or other property owned or used by that person, or deprives him or her of them or hinders him or her in the use of them
- o (e) with one or more other persons, follows that person, in a disorderly manner, on a highway
- o (f) besets or watches the place where that person resides, works, carries on business or happens to be, or
- o (g) blocks or obstructs a highway

- 2) How would we do this in a way that border agents could see that charges have been laid? Is this through CPIC? Would it capture municipal bylaw convictions?

With respect to CPIC, we have not been able to confirm - beyond Criminal Code charges and convictions – if Highway Traffic Act convictions or Bylaw Infractions are included in CPIC.

I understand that the US is very worried about the trade impact as a results of the blockades near the bridges and the POTUS may be calling the Prime Minister to discuss the situation and potential support.

Attached is the draft list of consequences, which I believe TC is holding pen on.

Can you please work with colleagues as necessary to provide some guidance on the above to discuss with IRCC and ensure we provide consistent advice? Looking for a very short turnaround on this

Thanks

Scott Harris

Vice-President | Vice-président
Intelligence and Enforcement Branch | Direction générale du renseignement et de
l'exécution de la loi
Canada Border Services Agency | Agence des services frontaliers du Canada
191 Laurier Ave West, Ottawa ON K1A 0L8
Government of Canada / Gouvernement du Canada
Telephone / Téléphone: (613) 948-4111